

or his or her dependents who would be eligible for augmentation of the claimant's benefits if the claim were approved.

[45 FR 13678, Feb. 29, 1980, as amended at 48 FR 24288, May 31, 1983]

**§ 718.203 Establishing relationship of pneumoconiosis to coal mine employment.**

(a) In order for a claimant to be found eligible for benefits under the Act, it must be determined that the miner's pneumoconiosis arose at least in part out of coal mine employment. The provisions in this section set forth the criteria to be applied in making such a determination.

(b) If a miner who is suffering or suffered from pneumoconiosis was employed for ten years or more in one or more coal mines, there shall be a rebuttable presumption that the pneumoconiosis arose out of such employment.

(c) If a miner who is suffering or suffered from pneumoconiosis was employed less than ten years in the nation's coal mines, it shall be determined that such pneumoconiosis arose out of that employment only if competent evidence establishes such a relationship.

**§ 718.204 Total disability defined; criteria for determining total disability.**

(a) *General.* Benefits are provided under the Act for or on behalf of miners who are totally disabled due to pneumoconiosis, or who were totally disabled due to pneumoconiosis at the time of death. The standards of this section shall be applied to determine whether a miner is or was "totally disabled" for the purpose of the Act.

(b) *Total disability defined.* A miner shall be considered totally disabled if the irrebuttable presumption in § 718.304 applies. If the irrebuttable presumption described in § 718.304 does not apply, a miner shall be considered totally disabled if pneumoconiosis as defined in § 718.201 prevents or prevented the miner:

(1) From performing his or her usual coal mine work; and

(2) From engaging in gainful employment in the immediate area of his or

her residence requiring the skills or abilities comparable to those of any employment in a mine or mines in which he or she previously engaged with some regularity over a substantial period of time.

(c) *Criteria.* In the absence of contrary probative evidence, evidence which meets the standards of either paragraphs (c)(1), (2), (3), (4) or (5) of this section shall establish a miner's total disability:

(1) Pulmonary function tests showing values equal to or less than those listed in Table B1 (Males) or Table B2 (Females) in appendix B to this part for an individual of the miner's age, sex, and height for the FEV<sub>1</sub> test; if, in addition, such tests also reveal the values specified in either paragraph (c)(1) (i) or (ii) or (iii) of this section:

(i) Values equal to or less than those listed in Table B3 (Males) or Table B4 (Females) in appendix B of this part, for an individual of the miner's age, sex, and height for the FVC test, or

(ii) Values equal to or less than those listed in Table B5 (Males) or Table B6 (Females) in appendix B to this part, for an individual of the miner's age, sex, and height for the MVV test, or

(iii) A percentage of 55 or less when the results of the FEV<sub>1</sub> test are divided by the results of the FVC test (FEV<sub>1</sub>/FVC equal to or less than 55%), or

(2) Arterial blood-gas tests show the values listed in Appendix C to this part, or

(3) The miner has pneumoconiosis and has been shown by the medical evidence to be suffering from cor pulmonale with right sided congestive heart failure, or

(4) Where total disability cannot be established under paragraphs (c)(1), (c)(2) or (c)(3) of this section, or where pulmonary function tests and/or blood-gas studies are medically contraindicated, total disability may nevertheless be found if a physician exercising reasoned medical judgment, based on medically acceptable clinical and laboratory diagnostic techniques, concludes that a miner's respiratory or pulmonary condition prevents or prevented the miner from engaging in employment as described in paragraph (b) of this section, or

(5) In a case involving a deceased miner in which the claim was filed prior to January 1, 1982, where there is no medical or other relevant evidence, affidavits (or equivalent sworn testimony) from persons knowledgeable of the miner's physical condition shall be sufficient to establish total (or under § 718.306 partial) disability. On a survivor's claim filed on or after January 1, 1982, but prior to June 30, 1982, where entitlement is sought to be established in accordance with § 718.306, where there is no medical or other relevant evidence, affidavits (or equivalent sworn testimony) from persons knowledgeable of the miner's physical condition shall be sufficient to establish total or partial disability; however, such a determination shall not be based solely upon the affidavits or testimony of the claimant and/or his or her dependents who would be eligible for augmentation of the claimant's benefits if the claim were approved. Except as provided in § 718.305, proof that the miner suffers or suffered from a totally disabling respiratory or pulmonary impairment as defined in paragraphs (c)(1), (2), (4) and (5) of this section shall not, by itself, be sufficient to establish that the miner's impairment is or was due to pneumoconiosis.

(d) In determining total disability, the following shall apply to statements made by miners about their condition:

(1) Statements made before death by a deceased miner about his or her physical condition are relevant and shall be considered in making a determination as to whether the miner was totally disabled at the time of death.

(2) In the case of a living miner's claim, a finding of total disability shall not be made solely on the miner's statements or testimony.

(e) In determining total disability to perform usual coal mine work, the following shall apply in evaluating the miner's employment activities:

(1) In the case of a deceased miner, employment in a mine at the time of death shall not be conclusive evidence that the miner was not totally disabled. To disprove total disability, it must be shown that at the time the miner died, there were no changed circumstances of employment indicative

of his or her reduced ability to perform his or her usual coal mine work.

(2) In the case of a living miner, proof of current employment in a coal mine shall not be conclusive evidence that the miner is not totally disabled unless it can be shown that there are no changed circumstances of employment indicative of his or her reduced ability to perform his or her usual coal mine work.

(3) Changed circumstances of employment indicative of a miner's reduced ability to perform his or her usual coal mine work may include but are not limited to:

(i) The miner's reduced ability to perform his or her customary duties without help; or

(ii) The miner's reduced ability to perform his or her customary duties at his or her usual levels of rapidity, continuity or efficiency; or

(iii) The miner's transfer by request or assignment to less vigorous duties or to duties in a less dusty part of the mine.

(f) No miner who is engaged in coal mine employment shall (except as provided in § 718.304) be entitled to any benefit under this part while so employed. Any miner who has been determined to be eligible for benefits shall be entitled to benefits only if the miner's employment terminates within one year after the date such determination becomes final.

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#### **§ 718.205 Death due to pneumoconiosis.**

(a) Benefits are provided to eligible survivors of a miner whose death was due to pneumoconiosis.

(b) For the purpose of adjudicating survivors' claims filed prior to January 1, 1982, death will be considered due to pneumoconiosis if any of the following criteria is met:

(1) Where competent medical evidence established that the miner's death was due to pneumoconiosis, or

(2) Where death was due to multiple causes including pneumoconiosis and it is not medically feasible to distinguish which disease caused death or the extent to which pneumoconiosis contributed to the cause of death, or